NATURAL RESOURCES

Report to the Utah Legislature's Commission on Federalism

Utah Department of Natural Resources (DNR)

On February 1, 2017, the Utah Legislature's Commission on Federalism convened at the Utah State Capitol to discuss Commission business, the principles of federalism, and the process the Commission will use to make recommendations to the federal government. As a result of those discussions, the Commission directed the chairs of all legislative standing committees to work with executive agencies in developing a "wish list" of priority requests to be sent to the federal government for implementation.

Below is a list of priority requests of the federal government from the Utah Department of Natural Resources, which has been developed at the request of Representative Stratton, Chair of the House Natural Resources, Agriculture and Environment Standing Committee, and Senator Dayton, Chair of the Senate Natural Resources, Agriculture and Environment Standing Committee. This list is organized by topic, and compiled from all seven Divisions within the Department of Natural Resources. The seven Divisions within the Utah Department of Natural Resources includes the Utah Division of Wildlife Resources, the Utah Division of Parks and Recreation, the Utah Division of Water Rights, the Utah Division of Water Resources, the Utah Division of Forestry, Fire and State Lands, the Utah Division of Oil, Gas and Mining, and the Utah Geological Survey.

When speaking with the Directors of each Division within DNR, all of them would like federal entities to exercise their existing authorities and discretion to implement priority actions for the State of Utah. In most instances, new authorities, policies or mandates aren't needed in order to execute on our priority requests of the federal government. However, most of these requests will require the use of the federal government's full discretion to implement those authorities, as well as a renewed emphasis on cooperation with the states.

Endangered Species Act (ESA)-Direct the United States Fish and Wildlife Service to implement the tenants of the Species Conservation and Endangered Species Act Initiative, as led by the Western Governors Association, and exercise the full discretion of Section 6 of the ESA, entitled Cooperation with the States.

National Environmental Policy Act-Direct federal agencies to resolve unreasonable delays to habitat restoration and forest health projects that arise from complications with the National Environmental Policy Act by expanding the use of Categorical Exclusions for projects that benefit wildlife, their habitats and forest and watershed health and resiliency.

Use of Lead Ammunition and Tackle-Rescind Director's Order 219, entitled Use of Nontoxic Ammunition and Fishing Tackle, as signed by the United States Fish and Wildlife Service on January 19, 2017. Once rescinded, allow the states to exercise discretion on the appropriate use of lead tackle and ammunition within their respective jurisdiction.

Coal leasing -Direct executive agencies to lift the moratorium on coal leases on federal lands indefinitely, and to expeditiously process the backlog of coal leases so that industry can expand their mining operations efficiently, effectively and responsibly.
Public Lands Primacy-Take steps to ensure public lands primacy is given to the states for solid and fluid mineral regulation, thus allowing the State of Utah to process permits and leases more efficiently, effectively and responsibly than the federal government.
Administrative Rulemaking-Direct the Office of Surface Mining, Reclamation and Enforcement to adopt a rule that discourages the indefinite suspension of mining operations without reclamation, even after economic recovery of resources has ceased.
Recognize Sovereign Lands-Settle the Bear River Migratory Bird Refuge case, so that boundaries of the refuge can be clearly established, sovereign lands can be appropriately recognized, and the State of Utah can be compensated accordingly.
Sovereign Lands Under Lake Powell-Compensate the State of Utah for the sovereign lands that lie beneath the reaches of the Colorado River that were inundated by the construction of Glen Canyon Dam and subsequent filling of Lake Powell.
Forest Management and Wildfire Suppression-Develop and support federal legislation that improves the federal wildfire funding process and the active management of the nation's forests. Prohibit the practice of late-season fire borrowing, and increase funding for nonwildfire suppression and forest management activities. Streamline the National Environmental Policy Act by expanding the use of Categorical Exclusions for projects that promote forest health and resiliency to catastrophic wildfire.
Existing Special Authorities-Expand the use of existing special authorities, such as stewardship contracting, to improve rural economic development opportunities by improving habitat conditions, and water quality and quantity on the nations forests.
Land and Water Conservation Fund (LWCF)-Distribute Land and Water Conservation Funds to states through the use of block grants, and remove perpetual and unreasonable encumbrances on lands purchased using monies from the Land and Water Conservation Fund.
Recreation and Public Purposes Act-Revise the Act to allow for local, common-sense discretion when selling federal lands to state and local governments for recreation purposes.
Lake Powell Pipeline-Support the completion of the Environmental Impact Statement, licenses and records of decision on the State of Utah's proposed Lake Powell Pipeline Project.
Colorado River-Support efforts of the Colorado River Basin states to manage the river cooperatively with federal agencies in the best interests of the water users and Native American tribes who depend on the river and environmental and recreational interests, and assist with drought contingency planning and negotiations for a new minute for the treaty with Mexico.
Federal Reserved Water Rights-When reserving federal water rights upon the creation of federal reservations (e.g., Indian reservations, national forests, national parks and national monuments), explicitly imply what water rights are being reserved so that states do not inherit the continued burden and cost of resolving these unanswered questions. In particular, fully fund the negotiated settlement agreements related to reserved water rights for Indian Reservations in Utah.

Clean Water Act-Clarify the explicit authority and limits of federal jurisdiction under which the Clean Water Act may proceed, and provide the State of Utah with jurisdiction over intermittent washes and drainages, under an authority articulated as "waters of the United States."

Federalism Issues

Endangered Species Act

The Endangered Species Act was intended to bring endangered species back from the brink of extinction, but for over 30 years it has only helped rescue 10 of the nearly 1,300 species that have been listed—a success rate of less than one percent. Instead of achieving its goal, the Act has affected the lives of innumerable landowners, bringing them into endless conflicts and litigation. Its vague classifications allow private property to be declared "critical habitats" practically arbitrarily, resulting in use restrictions and seizures. Additionally, it asserts federal control over listed wildlife, which is the property of the State of Utah.

Waters of the United States Rule

The Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) finalized a rule to redefine Waters of the United States (WOTUS) under the Clean Water Act on June 29, 2015. This rule dramatically expands federal agencies' jurisdiction within the State of Utah and shifts responsibilities under the CWA from the state to the federal government. More than just regulating water, the rule also affects Utah's ability to regulate and control land use. The rule is in direct violation of the CWA and is inconsistent with Supreme Court precedent.

Viability

The United States Forest Service (USFS) has determined that it is their responsibility to manage the habitat for a single species. Nowhere is that more clearly demonstrated than with the bighorn sheep. USFS is attempting to use the viability or existence of bighorn sheep to remove or alter the use of the land for domestic sheep or cattle. Utah has the legal authority to manage its wildlife resources, not the USFS.

Federalism Issues

Wild Horses and Burros

Wild horse and burro numbers are skyrocketing across the West and their ecological damage is a major concern. The BLM has shown its inability to effectively manage wild horses and burros under the current laws and regulations, leading to widespread frustration. For example, Utah's Herd Management Areas (HMAs) range in size from 15,000 to 262,000 acres and hold 4,000 horses. There are four times as many wild horses on the Conger Mountain HMA than allowed in its Resource Management Plan, yet BLM has taken little to no action to reduce their numbers. These areas are some of the most fragile ecosystems in the state and are home to sensitive plant and wildlife species. Since wild horses and burros are wildlife, Utah should be allowed to effectively, efficiently and humanely manage the wild horses and burros.

BLM enforcement/county sheriffs

BLM agents have repeatedly attempted to assert their primacy in law enforcement actions on agency-controlled lands, displacing county sheriffs who by law have the highest authority within their jurisdictions. This has led to a number of unnecessary conflicts and has impeded the ability of county sheriffs to ensure the safety and welfare of county residents. In addition, such actions clearly constitute a federal infringement upon Utah's police powers.

Public lands/equal footing doctrine

The federal government owns approximately 70% of the land in the State of Utah. Not only does this reduce the property tax base available for local schools and governments, but an argument can be made that such vast federal holdings violate the Equal Footing Doctrine by putting Utah on unequal footing compared to its sister states. Not only do local schools and governments lose property tax revenues, they also lose out on economic benefits that would come from development of those lands. In addition, activities on federal lands, such as grazing, logging, mining, and recreating, are subject to federal regulations and permits, which limit such activities and can create additional burdens and restraints on adjacent private lands.

Diligence claims

For decades, the United States Forest Service (USFS) has abused the state's laws regarding diligence claims to assert early-priority grazing water rights on federal lands. Under Utah law, diligence claims are used where beneficial use of water began prior to 1903, which predates the creation of the USFS. However, the USFS has presented ranchers' early use of water on public lands as evidence supporting the agency's diligence claims—but often attempts to predate the ranchers' own diligence claims on the same water. According to the USFS, the Intermountain Region of the agency "holds in excess of 38,000 stock water rights." The number of actual livestock and wildlife watered by these rights are far lower than the USFA claims. The agency notes that "some ranchers believe that they should hold the water rights because their livestock actually use the water… [but] water sources used to water livestock on Federal Lands are integral to the land where the livestock grazing occurs; therefore the United States should hold the water rights." In spite of legislation passed in recent years in an attempt to curb this practice, the USFS continues to file such diligence claims, with the most recent being filed this past December in Wayne County.

The Food Safety Modernization Act

The Food Safety Modernization Act (FSMA) represents a dramatic shift in focus from containment to prevention of foodborne illnesses, which is to be achieved by giving the Food and Drug Administration (FDA) authority to regulate the growing of produce. Under FSMA, the FDA has issued a series of rules governing the growing, harvesting, packaging, holding, manufacturing, and transportation of food for both animal and human consumption. However, there are already standards in place for the produce sold in grocery stores under the Good Agricultural Practices (GAP) program, which was established by the USDA at the industry's request. FSMA adds additional requirements but the two programs have not been harmonized, meaning there are two sets of standards and regulations producers must comply with before their produce is deemed "safe".

There are a number of additional indefensible rules that have come out of the FSMA rulemaking process, such as water quality standards and testing requirements for irrigation water that lack scientific backing, as well as a requirement that producers

control wildlife to prevent the potential adulteration of produce by birds, mice, deer, and other wildlife during the growing season.

Federal Assertions of Control Over Delegated Programs

Over the last few decades, the federal government has delegated authority over a number of federal programs to state agencies, but then repeatedly interferes with the administration of such programs and mandates changes under threat of revocation of the delegation. Many examples of this behavior can be seen in the EPA's delegation of many CWA programs to the Utah Division of Water Quality. When Utah passed a law in the 2016 legislative session allowing holders of discharge permits to perform additional science research to determine whether the permit limits are correct, EPA threatened to revoke Utah's authority to administer the permitting program. EPA also continues to issue new water quality criteria, which impose substantial costs on both the state and a multitude of private and governmental parties that have to adhere to the criteria. If Utah does not adopt any of its own criteria which aren't at least as strict as the EPA's criteria, the agency will again threaten to revoke its delegation of its CWA authorities. The agency also seems to continually searching for creative ways in which it can regulate nonpoint-source pollution, which is explicitly a state authority under the CWA. EPA—and the other federal agencies behaving in a similar manner—need to stop bullying the states and, instead, work cooperatively and flexibly in administering delegated programs. The EPA uses similar tactics with the pesticide program administered by the Utah Department of Agriculture and Food.

H-2A Visa Program

Farmers and ranchers have long experienced difficulty in obtaining workers who are willing and able to work on farms and ranches, leading many to seek foreign workers that can only enter the country under a U.S. Department of Labor temporary worker visa program known as H-2A. In its current form, the H-2A program places unnecessary burdens on U.S. farmers and ranchers, making the program too difficult and costly to use for most producers. Despite the costs, many producers in Utah continue to rely on these guest workers.

Federal Overreach

Contrary to current federal rules and regulations, the H-2A program is an immigration and homeland security issue—not a labor issue—and should be primarily administered by the U.S. Department of Homeland Security like the non-agricultural worker H-2B visa program.

Examples of problems caused by the Department of Labor's onerous, unwieldy visa program include:

- Under proposed rules, wage requirements in Utah will go from $750/month plus all expenses paid to $1,600/month plus all expenses.

- Administrative delays result in workers arriving on average 22 days after the date of need, causing an economic loss of nearly $320 million for farms that hire H-2A workers.
- The H-2A program is narrowly restrictive in the tasks it allows workers to perform and is only accessible for producers with seasonal needs, which doesn't address the year-round needs of many producers such as those in the dairy and livestock industries.

Public lands management

While the federal government has the authority to administer its public lands, the manner in which its agencies—largely the BLM and USFS—administer the lands can, at times, best be characterized as arbitrary and capricious. While many examples of such behavior can be found in other sections of this report, it is worth noting some additional cases where Utah ranchers have suffered as a result of these agencies' actions. A common report to UDAF is that when some ranchers retire and sell off their herds rather than pass on their operations to their heirs, their grazing allotments are retired rather than sold to other ranchers. In other cases, ranchers are threatened with loss of their permits due to forage being eaten down too low around headwaters, or allegedly too early in the grazing season, while the federal agents making such threats have no evidence that the livestock, rather than wildlife, are responsible for the damage. During times of drought, such as the one we've suffered through over the last 7-plus years, the number of animals allowed in a grazing allotment is reduced, but when range conditions improve the ranchers aren't allowed to return to their original numbers. However, out of all of these unjust and

offensive actions taken by the federal agencies, perhaps the most absurd behavior is how these agencies continue to stand in the way of efforts to improve range health. Utah's Grazing Improvement Program, overseen by UDAF, has pioneered innovative projects to improve rangelands, but its biggest obstacle by far has been federal agencies' red tape and inflexibility in attempting new approaches to range management. These agencies need to follow their own rules and increase their flexibility so that we can work together to improve range health and provide a secure future for Utah's ranchers.

Single-Species Management

Single-species management, which emphasizes management of public lands for a single species while inadequately considering possible consequences for the other species in an ecosystem, has been in use since at least 1930. For the past 25 years, ecosystem-based management, which attempts to take a landscape-level view and adaptively manage resources as a project progresses, has found widespread favor in the academic and wildlife management communities. However, some environmental groups portray ecosystem-based management as a Trojan horse that would allow degradation of

threatened and endangered species. Thus, federal agencies continue to promote and propagate single-species management plans for many species of concern without scientific justification for such an approach. Single-species management results in de facto ESA treatment of species, as demonstrated by its use with the Greater Sage-Grouse. The BLM has designated the Greater Sage-Grouse as an umbrella species, a form of single-species management where wildlife managers assert that addressing one species' well-being will inherently benefit many other species within the ecosystem. This is currently the largest single-species management program in history, and yet there is very little science to support the claim that the Greater Sage-Grouse is a suitable umbrella species. For instance, an academic paper on the Forest Service website states that the suitability of the bird as an umbrella species "has not been fully evaluated," and ultimately concludes that its protection will help a few other sagebrush-utilizing species but fail to address the needs of many others.

Federal Overreach Issues

BLM 2.0

This past December, the Bureau of Land Management (BLM) issued a final rule, known colloquially as BLM 2.0, which drastically changed the agency's procedures in developing and updating Resource Management Plans (RMPs). While the State of Utah recognizes the need for and has requested changes in the planning process for years, the new rule significantly reduces the BLM's duty to coordinate land management with state and local governments as mandated by FLPMA. FLPMA requires government-to-government consultation and coordination to ensure that the concerns and recommendation of state governments are recognized and addressed, but the final rule elevates the status and influence of non-governmental organizations and the general public above state governments in the planning process. The rule unlawfully narrows BLM's coordination requirements by not recognizing local land use policies and management programs unless they meet the threshold of "officially approved or adopted land use plan." The BLM must be required to be consistent with state and local plans, policies, and programs or else the agency will continue to violate FLPMA with impunity.

ENVIRONMENTAL QUALITY

The current framework for environmental regulation in Utah should be rebalanced to achieve the desired cooperative federalism.

Federal environmental and nuclear statutes originally were built on a concept of cooperative federalism, allowing for consistent national standards implemented in ways that make sense in individual states. Thus, the Environmental Protection Agency (EPA) and Nuclear Regulatory Commission (NRC) set national, health-based standards and then delegate the authority to implement and enforce these standards to the Utah Department of Environmental Quality (DEQ).

This delegation of authority, known as "primacy," for EPA, or "agreement state" status for the NRC, provides Utah with the flexibility to address state and local needs while still meeting federal standards.

Utah maintains primacy and agreement state status with EPA and the NRC to administer the following federal requirements:

- Clean Air Act
- Clean Water Act
- Safe Drinking Water Act
- Resource Conservation and Recovery Act
- Radiation-control programs and national standards set by the NRC.
- Limited role with Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund).

Federal oversight under these programs has expanded over time. Rather than simply confirming that DEQ meets federally established standards, EPA increasingly micromanages Utah's environmental programs. There is a need to rebalance the partnership between federal agencies and the state to restore cooperative federalism.

Utah could more effectively administer several programs currently outside of our delegated authority.

While the current framework provides Utah with the authority to directly administer many programs, there are opportunities to further transfer program oversight and funding to Utah.

All air-quality monitoring in the state should be under the Department of Environmental Quality's Division of Air Quality (DAQ).
EPA has determined that air-monitoring data collected by any federal agency is considered "regulatory data" and can be used against the state where it was collected, even though it lacks the same rigorous quality-assurance required for state monitoring data. Air-quality monitors currently operated by the Bureau of Land Management, National Park Service, and the National Forest Service in Utah do not have to meet the same rigorous quality-assurance protocols as State monitors.

States should control the location and need for monitoring stations based on local needs rather than EPA's desire to collect air-quality information for research purposes. EPA has previously required states to establish monitors (using AvGas) near airports to determine the levels of lead emissions from planes, as well as roadside-monitoring sites to determine pollution levels near highways. While the requirement for airport sites was reduced and/or eliminated in some areas, EPA is still forcing the states to expend significant financial resources to develop roadside monitoring sites for their purposes, not ours. While EPA is allowing some states to remove near-road monitoring sites that did not reinforce EPA's suspicions of higher pollution near roads, they are still requiring Utah to establish two roadside monitors that will cost the state hundreds of thousands of dollars. There is no justification for this requirement; the states should have the authority to decide what stations are needed and where they should be located.

EPA should be required to go through the formal rulemaking process for all standards and guidelines.
EPA has a history of ruling by "guidance," "memo," or "preamble." EPA considers the information in any of these three types of documents to have full force of law and holds the states to that standard. Examples include EPA's "Puzzle Book" that is used to regulate New Source Review programs, and the 1992 Calcagni memo that outlines how States must request re-designation from nonattainment to attainment. Neither document has ever gone through rulemaking, yet EPA treats both as rule.

The ability to regulate motor vehicle fuel should be given to the states, allowing them to have different applicability requirements as long as the states requirements are not stricter than corresponding federal standards.
Regulation of motor-vehicle fuel and the implementation of Tier 3 fuels in Utah would, by EPA's own calculations, have the biggest air-quality benefit anywhere in the country – if only the State could do it. EPA wrote the Tier 3 fuel requirements, but loopholes in the rule don't require Utah's refineries to supply Tier 3 fuel until 2020 at the earliest. Even by 2020, the state's refineries can avoid producing Tier 3 fuel by buying credits, averaging, and other means.

EPA should establish a low threshold for the states to flag and/or exclude monitoring data from natural events, and then have an automatic concurrence for high-wind events, wildfires, and volcanic activities if the state has a mitigation plan that can be activated during these events. At times, states exceed air-quality standards due to natural events such as windstorms or wildfire smoke. States should not be forced to write State Implementation Plans (SIPs) to control Mother Nature when natural or exceptional events can overpower the controls that states have in place. Despite EPA's concurrence that natural events should be excluded from regulatory data, they have written rules that are nearly impossible for states to meet. Current rules require states to prepare technical documents that are hundreds of pages long to justify the flagging and/or exclusion of naturally caused high-pollution readings from consideration in determining a region's attainment status. EPA reviews and approves almost none of these documents. This requires states to write plans that impose extremely expensive controls that don't address the real issue – wind-blown dust from the West Desert.

The Department of Environmental Quality has successfully managed the majority of EPA Region 8 Superfund Site Assessment investigations within Utah and could potentially manage all site-assessment activities in the future.

DEQ takes an active role in the implementation of the federal Superfund program in Utah through our Division of Environmental Response and Remediation (DERR). Utah could develop the capability to develop scoring packages evaluating these pre-remedial sites for possible proposal to the National Priorities List. Acting as the lead agency for Superfund Fund-lead sites, where there is no viable responsible party, the state has successfully managed Remedial Investigations/Feasibility Studies (RI/FS) and Remedial Design/Remedial Action (RD/RA) components of the Superfund process. The state has also taken the lead for 5-year reviews of remedies where contamination is left on site.

The state's track record for projects where the state has served as the lead agency has been completion of projects on time (except in circumstances where EPA requested additional ground water modeling scenarios) and within budget. Examples include the Sharon Steel Operable Unit 2 (Midvale residential properties), Davenport and Flagstaff Smelter Site, and Jacobs Smelter Operable units 1 and 2. At Fund-lead sites, the state has a vested interest in managing the Remedial Action within developed budgets, as the state is required to pay for 10 percent of the total cost of the Remedial Action.

Eliminating some current federal requirements would allow the Department more flexibility to do more good in Utah.

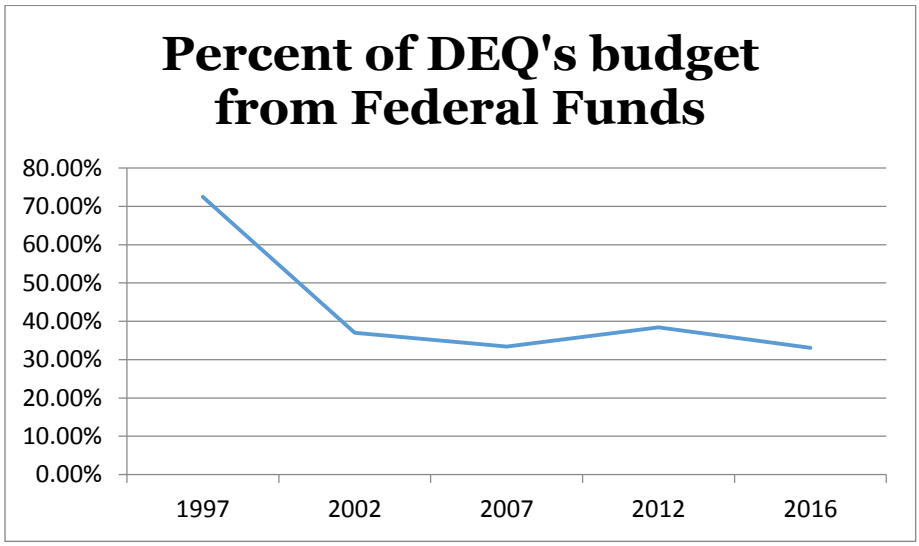
In FY 2017, the Division of Drinking Water authorized the use of $33M in federal revolving loan funds. However, $30M of that money was declined by drinking-water systems because of the burdensome requirements associated with using federal funds. The federal SRF requirements that cause the greatest angst among potential borrowers include:

- *American Iron and Steel* -This requirement can add as much as 40 percent to a project's material cost. There are also administrative costs due to inspections and verification of a product's American-made status, paperwork filing, and verification.
- *Davis-Bacon Wages*-While most contractors are already paying "prevailing wages," the administrative and paperwork costs associated with this requirement (interviewing contractor employees, managing/storing compliant time sheets, etc.) are burdensome.
- *Disadvantaged Business Enterprises*-Administrative and paperwork management costs are burdensome.
- *Project Signage*-Cost can be prohibitive for traditional project signs. Other allowable signage chosen by the borrower can be time-consuming to develop and post.

The grant and loan programs administered by the Division of Water Quality, which are used to develop wastewater systems in Utah, face similar challenges.

More federal funding could be directed to administer programs in the states rather than supporting federal agencies.

In 1997, federal funds accounted for 72 percent of the funding to administer the programs within the Department of Environmental Quality. That number has dropped 39 percent over the last twenty years to only 33 percent of the Department's funding in 2016. Increases in EPA funding have gone to building EPA staff, not to states. If EPA reduced its detailed oversight of the state programs, it could reduce its costs and return funding to states to protect human health and the environment.



The money EPA uses for modeling and inventory work for western-state ozone issues should be given to the Western Resource Air Partnership (WRAP) to provide western states with more local control.

Over the past 30 years, EPA established the Ozone Transport Region in the eastern states and spent millions of dollars on research, monitoring, and modeling to identify and control sources of ozone east of the Mississippi River. They did this because ozone is a regional issue: Delaware, for example, has no sources of pollution yet violates the ozone standard from pollution drifting in from other areas. EPA acknowledges similar issues in the West with both ozone and particulate matter.

Western states have worked together through the Western Governors Association to develop the Western Resource Air Partnership (WRAP) to coordinate inventory, monitoring, and modeling work. EPA says they do not have the resources to help the western states, and these states must go it on their own. Now the WRAP is out of funding. EPA now says they can do the modeling and inventory work the western states need, but their work hasn't had the rigor of the WRAP research and is not credible.

PUBLIC LANDS

POLICY OBJECTIVES FOR FEDERAL LAND MANAGEMENT

The State of Utah's Policy Objectives to
Achieve Balanced Management of Federal Lands

November 30, 2016

The Public Lands Policy Coordinating Office ("PLPCO") of the Governor of the State of Utah (the "State") presents the following policy objectives relating to management of the public land within the State's boundaries. This list identifies the priorities of the highest importance, although numerous other policies concerns exist. Each issue identified below is only a brief outline of the issue and the solutions being sought. Upon request, PLPCO will provide additional details regarding the specific actions needed to address each of these policy priorities and assist in preparing language or other work product for proposed solutions.

Kathleen Clarke
Director

Public Lands Policy Coordinating Office

SUMMARY OF POLICY PRIORITIES

A. Preserve State Sovereign Interests on Public Lands

1. **Increase State and Local Government Decision Making in Federal Process**. Strengthen cooperating agency status and mandate federal consultation regarding federal management decisions and planning documents.
2. **Maintain Access to Public Lands and Natural Resources**. Protect access to public lands by resolving the state's R.S. 2477 road litigation and revoking federal actions and plans that prohibit or limit access to public land.
3. **Wildlife Managemen**t. Protect and restore state authority over wildlife by reducing federal oversight over state managed wildlife and encouraging federal regulations issued under the

endangered species act that recover and delist species while supporting state management over wildlife.

B. Encourage Sound Land Management Policies

1. **Wilderness Reform**. Preclude federal agencies from managing areas that are not wilderness study areas or Congressionally designated wilderness, such as "lands with wilderness characteristics," as *de facto* wilderness and request Congressional action and determination on all wilderness study areas.
2. **Management of Wild Horses and Burro Populations**. Encourage BLM to manage wild horse populations and use all available tools and techniques to manage wild horses and burros under the Wild Free-Roaming Horses and Burros Act of 1971, 16 U.S.C. § 1331 *et seq.*
3. **Maintain and increase public land grazing**. Maintain and increase the current number of AUM's available for livestock grazing, and, where appropriate, allow adaptive management strategies to more fully benefit from range resources.
4. **Encourage Conservation.** Amend land use plans, policies and practices that encourage only preservation, but do not allow for multiple-use and conservation of resources.

C. Limit Large Scale Land Reservations and Withdrawals

1. **Support Resource Conservation and Development.** Diminish Secretary of Interior's broad discretion over mineral, oil, and gas reservations, deferrals, and moratoriums
2. **Revoke Harmful Secretarial Orders**. Revoke the secretarial "coal moratorium" severely limiting new coal leases on federal lands and other policies reserving or limiting access and use of large portions federal land in Utah and prevent similar orders from being issued.
3. **Sage-grouse Land Use Plan Reform**. Amend or revoke sage-grouse land use plans limiting energy resource by withdrawing millions of acres of land in Utah under the guise of protecting sage grouse habitat.
4. **Antiquities Act Reform**. Limit Presidential authority exercised under the Antiquities Act, 54 U.S.C. § 320301 and modify past designation of monuments in Utah.

D. Equal Access to Justice Act (EAJA) and Rulemaking by Judicial Proceedings ("Sue and Settle")

1. **EAJA Restructuring**. Work with state and federal representative to reform EAJA to limit the act's applicability, require public disclosure and participation, account for payments made, and require transparency.
2. **Challenge Sue and Settle Litigation**. Limit sue and settle activities by environmental organizations and the resultant rulemaking occurring outside of the Administrative Procedures Act.
3. **Education and Improvement**. Educate local governments, lawmakers, lawyers and judges, and others regarding the impact of environmental litigation and attorney fee awards under EAJA.

EXECUTIVE SUMMARY OF POLICY PRIORITIES

A. Preserve State Sovereign Interests

The State, as a sovereign entity, has a duty and the authority to protect the health, welfare and safety of the citizens within its border. The State opposes congressional, judicial, and executive abrogation of the State's duty to protect its citizens. Further, citizens of the State are opposed to unreasonable and intrusive federal mandates and oversight. The right to use, access, and enjoy the natural resources found within the State is one that has existed for over a century. Several federal actions and policies have encroached upon the State's rights, diminished the State's position as a cooperating agency, and disregarded the State's policies and input regarding management of federal land within the State. These actions have also resulted in restrictions on access to public land within the State and usurpation of the State's right to manage un-endangered and unlisted wildlife.

1. Cooperating Agency Status and Consultation Regarding Federal Management Decisions. Although many statutes afford the State the right to be consulted and to have its input meaningfully considered by federal land agencies, in practice the State's and local governments' participation in the planning process for land use is diluted and disregarded. The status of special interest groups, on the other hand, has been elevated and is, in practice, often given weight equal to or excess of that accorded to the State and local governments. Planning rules, handbooks, and policies have diminished the role played by cooperating agencies, including the State, in land management decisions and have led to an emphasis on land preservation instead of multiple-use. Coordinating policies and land use decisions with State and local governments will protect the State's citizens' access to, and use of, public land within the State.

Issue: Federal agencies have interpreted statutes requiring coordination and consideration of State and local government policies to require only consultation, with no obligation to cooperate, substantively consider comments offered by the State or local governments, or achieve consistency with State and local government policies.

Solutions:

Congressional: Amend Federal Land Policy and Management Act, 43 U.S.C. § 1701 *et seq.* ("FLPMA"), National Forest Management Act, 16 U.S.C. § 1600 *et seq.* ("NFMA"), and National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* ("NEPA") to place the burden of coordination on the federal land agencies to ensure that the State is given a chance to participate in federal land use planning processes and require coordination throughout the planning and implementation process. Strengthen cooperating agency status in FLPMA, NFMA, and NEPA to require that inconsistencies raised by the State's Governor during the consistency review process be addressed and to

require that State and local land use and resource plans and policies be accounted for and implemented in land use plan amendments.

Administrative: Revise handbooks, policies, and directives to implement FLPMA, NFMA, and NEPA in a way that provides the State and local governments the ability to provide input as cooperating agencies and independent sovereigns as originally envisioned by the statutes. Amend handbooks, policies, and directives to require early coordination with the State and local governments in all land use planning decisions. Revise handbooks, policies, and directives to require consideration and implementation of State and local government land use plans, policies, and programs to the extent they are not inconsistent with federal statutes.

Amend handbooks, policies, and directives to require federal agencies to obtain and meaningfully consider input from the State and local governments, to adopt land use management plans consistent with State and local government plans, programs, and policies, and to explain the reasons for not adopting the State's and local governments' plans, programs, and policies. Amend handbooks, policies, and directives to require meaningful consideration of the impact of land management decisions on local and State economies, access to resources, and development opportunities. Amend handbooks, policies, and directives to strengthen the consistency review process.

Issue: BLM Planning Rule 2.0 and the 2012 amendments to the Forest Service planning rule diminish the role of the State and other cooperating agencies by elevating the status of NGOs and the public at large. The State's and local governments' participation in and influence regarding land use planning as contemplated by FLPMA, NFMA, and NEPA is diminished by proposed and adopted administrative planning rules. Agencies are not meaningfully coordinating or cooperating with the State or local governments and are instead engaging in a perfunctory consultation process that disregards input from cooperating agencies, and are elevating the input from special interest groups.

Solutions:

Administrative: Revoke the revised BLM Planning Rule 2.0 and revise the 2012 Forest Service planning rule. These planning rules diminish the State's and local governments' involvement in land use planning by elevating the participation of special interest groups to a level equivalent to that accorded to sovereign entities. Positions advocated by special interests are single-issue oriented and often do not represent the views or interests of the public at large, especially those most impacted by land use planning decisions. The rules should be revised to allow for an exclusive comment and coordination period involving only cooperating agencies and excluding special interest groups and NGOs.

Revise handbooks, manuals, and policies implementing the revised planning rules and amend provisions that do not allow or require

meaningful participation in the land use planning process by the State and local governments.

2. Access to Public Land and Natural Resources. BLM and the Forest Service have limited access to, and use of, public land within the State. The State has management jurisdiction over water and un-endangered and unlisted wildlife within the State, much of which is located on federal land. The State is dependent upon access to its natural resources and federal land within its boundaries to exercise its management authority, to promote economic development, and to ensure the enjoyment, health, and welfare of the State's citizens.

Issue: The State has been unable to resolve its claims under R.S. 2477 for rightsof-way established across federal land prior to 1976. These rights of way are essential for access to federal land, resource development, and enjoyment of federal land by the State's citizens, and visitors to the State.

Solutions:

Congressional: Enact a statute providing a streamlined process for resolving the State's R.S. 2477 claims, addressing who bears the burden of proof and defining the burden, addressing standards for accepting an R.S. 2477 grant, and granting a right-of-way through Recapture Canyon. Amend the Quiet Title Act, 28 U.S.C. § 2409a, to expressly preempt state statutes of limitation and to define "disputed title" to be consistent with a "cloud on title" standard.

Issue: The means of accessing federal land have been restricted, including access by OHVs and motorized and mechanized modes of transportation.

Solutions:

Congressional: Amend relevant statutes to provide specific standards regarding when rights-of-way will be open to OHV, mechanized, and motorized use.

Administrative: Amend regulations prohibiting or limiting OHV, mechanized, and motorized use in various areas. Amend regulations to allow OHV use on roads open to vehicular traffic.

Executive: Revoke or modify Executive Order No. 11644, Use of Off-Road Vehicles on the Public Lands (Feb. 8, 1972) and Executive Order No. 11989, Off-Road Vehicles on Public Lands (May 24, 1977) to accord more freedom to the land managing agencies to allow OHV access to federal land.

Issue: Pursuant to the "Cotter decision," the State is assured in its ability to access State School and Institutional Trust Land parcels for purposes that directly or indirectly generate economic revenues for the school trust fund. Revenue producing activities on trust lands are, as a practical matter, limited by restrictive designations or reservations of surrounding lands as national parks, national monuments, wilderness study areas, wilderness, or lands with wilderness characteristics.

Solutions:

Congressional: Amend FLPMA, NFMA, and other authorities to require access to State trust parcels for any purpose identified by the State, regardless of whether it is access for a situation "directly involving economic revenues generated for the school trust." Amend relevant statutes to allow access to inheld properties regardless of the designations applicable to surrounding land.
Administrative: Revise rules, handbooks, policies, and directives to provide for access to trust parcels for any purpose identified by the State and regardless of restrictive designations applicable to surrounding parcels.

3. Wildlife Management. Management of species that are not endangered or listed under the Endangered Species Act, 16 U.S.C. § 1531 *et seq.* ("ESA") is committed to the State by the Tenth Amendment. Recently, federal agencies have usurped the role of the State for managing wildlife within its borders by dictating management strategies for species that are not listed under the ESA. Wildlife management in wilderness areas has been curtailed by federal agencies' requests for the State to obtain permits from the federal agencies before engaging in mechanized and motorized wildlife management activities in certain areas.

Issue: The federal government is attempting to engage in wildlife management activities within the State's boundaries without statutory authority and is expanding the limited statutory authority the federal government has to regulate endangered species. The federal government has requested permits and otherwise exercised authority over management activities in a way that interferes with and limits the State's ability to manage wildlife populations.

Solutions:

Congressional: Amend relevant statutes to affirm the State's right to manage wildlife and to clearly delineate the limited circumstances under which the federal government may regulate wildlife, namely when the wildlife has been listed as an endangered species. Amend relevant statutes to expressly affirm the State's right to actively manage wildlife on all land, including Wilderness Areas, WSAs, and land with wilderness characteristics, and to eliminate the need for the State to obtain permits from the federal government before engaging in wildlife management activities.
Administrative: Amend handbooks, policies, and directives requiring permits or consent from the federal government before the State may engage in management activities, such as using helicopters in wilderness areas. Revise planning rules to affirm the State's position as the sovereign entity with responsibility for managing wildlife, including preparing all plans for managing unendangered and unlisted wildlife populations on federal land and to strengthen the State's position as a coordinating agency with exclusive authority for wildlife management activities. Amend regulations, policies, handbooks, and directives to specifically allow the State to use mechanized and motorized means to manage wildlife, even in Wilderness Areas,

WSAs, and land with wilderness characteristics, and to eliminate the need for the State to obtain permits from the federal government before engaging in management activities.

Issue: Although the State's plan has been successful in recovering sage grouse populations, the federal government has not agreed to adopt the plan because it relies upon voluntary conservation measures. Despite the fact that the species is not listed as endangered, the federal government has imposed a *de facto* listing by dictating to the State the manner and means by which the sage grouse populations are managed.

Solutions:

Administrative: Allow State to perform its role of wildlife management to prevent a species from becoming listed under the Endangered Species Act. Amend regulations, handbooks, policies, and directives to recognize the State's authority to manage sage grouse populations for unlisted birds and implement the State's sage grouse conservation plan.

Issue: The ESA is used to curb development rather than to protect endangered species. Large areas that are designated as critical habitat are unnecessary for the recovery of listed species and are instead chosen to restrict development of natural resources.

Solutions:

Congressional: Set statutory standards so that the regulations, policies, and directives adopted do not exceed the purpose or intent of the ESA as originally written.

Administrative: Adopt criteria that allows for a flexible management approach that encourages economic development while preserving endangered species. Amend rules, handbooks, policies, and directives to protect the species, but not necessarily each individual within the species. Achieve a balance between habitat designation and development of natural resources.

B. Encourage Sound Land Management Policies

Federal land management has created significant difficulties for the State and its local economies. The federal government has failed to resolve WSA designations and has removed large areas of land from multiple-use mandates outside of any statutory authority to do so by creating *de facto* wilderness. Land management practices have led to the degradation of many range resources by failing to properly manage wild horse and burro populations on the western ranges or provide for adaptive management of grazing allotments.

1. **Wilderness, Wilderness Study Areas, and *de facto* Wilderness.** Addressing the multiple-use of land that has not been designated as wilderness is a high priority for the State. Federal land management policies and practices have created large areas denominated "lands with wilderness characteristics" that are managed for preservation purposes despite being subject to the FLPMA multiple-use mandate. In addition, although wilderness inventories conducted pursuant to FLPMA were

completed in the 1990s, Congress has not made a final determination regarding the disposition of WSA land.

Issue: Agency practices and policies have resulted in land being managed as wilderness despite not being Congressionally approved Wilderness Area or timely identified as a WSA. Agencies are inventorying lands as potential wilderness and are managing lands as wilderness if they are determined to have "wilderness characteristics." Managing undesignated land as Wilderness Areas or as WSAs has resulted in land that should be subject to multiple-use being subjected to a preservation mandate not envisioned by statutory authority.

Solutions:

Congressional: Amend FLPMA and the NFMA to preclude agencies from managing land that is not designated as Wilderness Areas or WSAs instead of managing the land for multiple-use. Require Congressional action on all pending WSA designations.

Administrative: Amend policies, handbooks, procedures, and directives to preclude agencies from managing land for preservation or managing the land as wilderness if the land is not designated as a WSA or Wilderness Area. Amend policies, handbooks, procedures, and directives to preclude agencies from conducting additional inventories of land for wilderness and wilderness characteristics. Amend the Forest Service's 2012 Planning Rule, pursuant to which the Forest Service is conducting an inventory of land to recommend for designation as wilderness. Revoke the Forest Service's roadless rule and reinstate timber production on federal land that has been managed as special areas or roadless areas.

Executive: Although the order is unfunded, revoke Secretarial Order No. 3310, *Protecting Wilderness Characteristics on Lands Managed by the Bureau of Land Management* (Dec. 22, 2010).

2. Wild Free-Roaming Horses and Burros Act of 1971, 16 U.S.C. § 1331 *et seq.* ("WHBA"). The BLM has management authority and duties under the WHBA, but has failed to manage the horses in a way to control their populations as required by the WHBA. Populations of wild horses are nearly three times the appropriate management levels ("AML") set by the BLM. These excess horses have damaged rangeland resources and impacted grazing on the federal land and reduced forage for other wildlife

Issue: BLM has been unable to implement the WHBA as written because of Congressional riders prohibiting the BLM from using all available means of controlling wild horse populations on public land. BLM has refused to follow the recommendation of the Wild Horse and Burro Advisory Board to offer unadoptable animals for sale without limitation or humane euthanasia.

Solutions:

Congressional: Allow and fully fund the implementation of the WHBA as written by allowing the BLM to use sufficient funds to allow horses to be sold without limitation or humanely euthanized. *Administrative:* Implement policies within the BLM to focus on gathering and removing excess wild horses. Implement policies to follow the recent recommendation from the advisory board. Allow the State to manage wild horse populations as delineated in the WHBA as written.

3. Adaptive Range Management and Public Land Grazing. Conditions on the range change depending upon many variables, including drought and forage conditions. Adaptive management allows federal agencies to respond to changing conditions in real time to more effectively manage the rangeland resources.

Issue: Animal Unit Months ("AUM") are at times voluntarily suspended because of range conditions. Environmental analyses are not conducted for suspending AUMs. To reinstate AUMs, however, agencies often require environmental analyses. In addition, agencies at times do not reinstate the voluntarily suspended AUMs and instead allow them to be removed from the permits by not notifying the permit holder that previously approved, but voluntarily suspended, AUMs that were initially part of the permit have been removed.

Solutions:

Congressional: Create a categorical exclusion to NEPA for reinstating voluntarily suspended AUMs.
Administrative: Adopt a policy of including adaptive management language in all environmental assessments relating to permit administration and renewals. Adopt a policy requiring agencies to notify permit holders of available, but voluntarily suspended, AUMs so that the permit holder does not lose the opportunity to request the maximum number of AUMs under the permit.

C. Limit Large Scale Land Reservations and Withdrawals

Land and interests in land have been reserved on a large scale, and uses critical to local governments and residents have been curtailed, at times without any significant review of the economic or social impacts of the actions. Among the most pressing issues relating to large scale reservations are the unilateral use of the Antiquities Act to reserve and remove from multiple-use millions of acres of land necessary for local economies; withdrawal of land from mineral, oil, and gas development; withdrawals of land under the guise of recovering populations of sage grouse; and enacted and requested moratoriums on coal, oil, and gas production.

1. Mineral, Oil, and Gas Reservations, Deferrals, and Moratoriums. Several large scale oil, gas, and mineral withdrawals and deferrals have been made in recent years, largely to prevent coal, oil, and gas production from federal land. These withdrawals include, but are not limited to, (1) Secretarial Order No. 3338, Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program (Jan. 15, 2016), which imposed a moratorium on

processing of applications for coal leases and prohibited leases, lease sales, and modifications subject to limited exceptions; (2) Public Land Order 7787, Withdrawal of Public and National Forest System Lands in the Grand Canyon Watershed, Arizona (Jan. 21, 2012), which withdrew for twenty years approximately one million acres from location and entry; and (3) *Notice of Proposed Withdrawal; Sagebrush Focal Areas; Idaho, Montana, Nevada, Oregon, Utah, and Wyoming and Notice of Intent to Prepare an Environmental Impact Statement*, 80 Fed. Reg. 57635 (Sep. 24, 2015), which proposes withdrawing approximately ten million acres of land from mineral entry for sage grouse habitat. In addition, several parcels that would otherwise be available for leasing have been deferred and withheld from sale.

Issue: Mineral, oil, and gas development has been halted on federal land by withdrawals, deferrals, and other procedures.

Solutions:

Congressional: Amend relevant authorities to require that parcels be made available for leasing and development if certain conditions are met, including economic and social analyses of the effect of the withdrawal, limitations on the purpose, temporal duration, and geographic extent of the withdrawal, and limitations on the nature of the lands that may be withdrawn.

Administrative: Amend relevant rules, handbooks, policies, and directives to provide that parcels "shall" be offered under certain circumstances, rather than stating that parcels "may" be offered for leasing and development. Prepare new policies and amend existing policies to encourage and allow mineral, oil, and gas development on federal land.

Executive: Revoke Secretarial Order No. 3338, Discretionary Programmatic Environmental Impact Statement to Modernize Federal Coal Program (Jan. 15, 2016).

Issue: Millions of acres of land have been proposed to be withdrawn to protect purported sage grouse habitat. Sage grouse is not found in many of the areas subject to the withdrawal, and the State's conservation plan for sage grouse populations addresses threats to the sage grouse's habitat. The mineral withdrawal usurps the State's authority to manage the sage grouse and precludes development in areas that are not sage grouse habitat.

Solutions:

Administrative: Amend regulations, handbooks, policies, and directives to recognize the State's authority to manage sage grouse populations for unlisted birds and adopt the State's sage grouse conservation plan. Revoke the notice of proposed withdrawal, limit the habitat to that in which the sage grouse is actually found, and acknowledge the State's role in wildlife management by allowing it to conserve the sage grouse and its habitat as provided by the Tenth Amendment.

2. Climate Change Programmatic EIS for Coal and Oil and Gas Moratorium. Secretarial Order No. 3338, Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program (Jan. 15, 2016) ordered a discretionary programmatic EIS to evaluate, among other things, how to assess federal coal production's impact on climate, how to address any such impact, and "how best to protect the public lands from climate change impacts." While this discretionary programmatic EIS is being performed, new coal leases have been prohibited, with limited exception. A recent lawsuit, *Wild Earth Guardians v. Jewell*, Case No. 1:16cv-01724 in the United States District Court for the District of Columbia, requests a programmatic EIS to assess the impact on climate of oil and gas leasing and production from federal lands. If successful, this litigation could result in a moratorium of oil and gas leasing in addition to the coal leasing moratorium.

Issue: Programmatic EISs are being used as a means of limiting hydrocarbon production on federal lands in response to the "keep it in the ground" movement. Areas are effectively withdrawn from leasing without any analysis of the economic or social impact such actions have on the communities depending upon energy production. In addition, as evidenced by the recently filed litigation, areas may be effectively withdrawn as the result of rulemaking by judicial proceedings (suing and settling).

Solutions:

Congressional: Amend relevant statutes to prohibit the Secretary of the Interior from halting hydrocarbon leasing activities on federal land during the pendency of programmatic EISs. Amend relevant statutes to require analyses of the social and economic effect of deferring leases or prohibiting new leases while a programmatic EIS is performed. Prepare statutory criteria governing any action that prohibits or limits, on a programmatic scale, leasing activities on federal land.

Administrative: Amend agency rules, handbooks, policies, and directives regarding leasing activities on federal land to identify criteria limiting the Secretary's ability to defer leases or limit leasing activities on a programmatic scale.

Executive: Revoke Secretarial Order No. 3338, Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program (Jan. 15, 2016).

3. Antiquities Act, 54 U.S.C. § 320301. The Antiquities Act provides that "[t]he President may, in the President's discretion, declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments." 54 U.S.C. § 320301(a). The act allows the President to "reserve parcels of land as part of the national monuments." 54 U.S.C. § 320301(b). "The limits of the parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected." 54 U.S.C. § 320301(b).

Issue: Although the Antiquities Act was originally intended and written to limit the geographic scale of reservations of land to the "smallest area compatible with the proper care and management of the objects to be protected," it has been used to reserve and remove from multiple-use and development millions of acres of federal land across the western United States. Reservations have been made without input from or consent of the elected representatives serving the areas reserved and in the face of opposition from local governments and residents.

Solutions:

Congressional: Amend the Antiquities Act to require input from and consent of the elected representatives serving the areas reserved; exempting the State from future Antiquities Act proclamations; subjecting national monument designations to review under NEPA; limiting the size or location of a national monument; or requiring Congressional approval of monument proclamations. Address or diminish the size of prior national monument reservations.
Executive: Diminish the size of national monuments previously made that reserved more land than the smallest area compatible with the proper care and management of the objects to be protected.

D. Equal Access to Justice Act and Rulemaking by Judicial Proceedings ("Sue and Settle")

1. EAJA Restructuring The Equal Access to Justice Act, 28 U.S.C. § 2412 ("EAJA") allows nonprofit entities to recover attorneys' fees and expenses if they prevail in a civil action against the federal government. This act is used by many NGOs to recover fees and fund additional litigation involving the federal government.

Issue: Because NGOs can recover attorneys' fees, they are not hesitant to pursue litigation against the federal government to further their special interests. Many federal agencies are sympathetic to the views advocated by these organizations and invite litigation so that the parties can settle the litigation and have their settlement agreement clothed with the authority of a court order and thereby accorded the deference of an administrative rule without rule-making procedures. These court orders are essentially rulemaking by judicial proceeding, involving only the special interest group and the federal government and precluding the opportunity for involvement by the public and, at times, the State and local governments, as required by statute.

Solutions:

Congressional: Limit the applicability of the act to specific entities. Require public disclosure of and participation in the development of settlement agreements entered into by the federal government and NGOs. Require disclosure of and accounting for payments made

pursuant to EAJA. Require transparency in the litigation, settlement, and award processes.

Administrative: Adopt rules, policies, and directives requiring the publication of proposed settlements, requiring public comment on proposed settlements, and increasing transparency in the litigation, settlement, and award process.

2. **Challenge Sue and Settle Litigation**. Limit sue and settle activities by environmental organizations and the resultant rulemaking occurring outside of the Administrative Procedures Act.

3. **Education and Improvement**. Educate local governments, lawmakers, lawyers and judges, and others regarding the impact of environmental litigation and attorney fee awards under EAJA.

GUIDELINES

Senator Dayton and Representative Stratton,

It is our understanding that you, as co-chairs of the Natural Resources, Agriculture, and Environment Interim Committee, have been invited to discuss federalism issues with the Commission on Federalism on Monday February 13th at 6:00 pm in room 20 of the House building. We have been told that you are to come with a list that is specific to actions that the federal government could take to restore power to the states, including priorities and the anticipated benefits.

I know that you have been working with state agencies and other interested groups to prepare a discussion list. I, as staff of the interim committee, and Megan Bolin, as staff to the Commission for the Stewardship of Public Lands, offer the following ideas for consideration. This list is not comprehensive and may contain ideas you choose not to include. Hopefully it, along with the other information you are gathering, will be helpful in your discussion with the Commission on Federalism. Let us know if we can be of any further help.

Selected Federalism Issues related to natural resources, agriculture, and environment:

- In regulating air quality, EPA could allow states and regions latitude with respect to air quality standards that reflect unique topography and environment of the area. Strategies for achieving air quality standards could be tailored to unique regions rather than a "one size fits all" standard.

- In implementing Tier III fuel standards, EPA could recognize that those standards would have a substantial impact in Utah and allow for modification of the averaging standards to provide for earlier implementation in Utah.

- EPA could provide greater flexibility in establishing and implementing water quality standards

- More EPA latitude with regard to designation of "threatened" or "endangered" under the endangered species act and greater recognition of state or regional success in efforts to protect a species (e.g. sage grouse in the west).

- Distribution of a greater amount of federal mineral lease royalties to the state.

- Avoidance of federal water right overreach such as the U.S. Forest Service requirement that ski resorts transfer water rights to the federal government as a condition of operating on public land (U.S.F.S. backed off on this requirement).

- Recognition of local law enforcement jurisdiction on public lands.

Selected Federalism issues related to public lands:

The federal government currently controls approximately 66% of land within Utah. The state argues that management of that land is best left to the state and local governments. In order to gain better control over Utah's public lands, Congress could consider the following:

1. Transfer all federally owned land to the state;

2. Direct the federal government to sell or otherwise dispose of its land in Utah;

3. Continue with legislative efforts like the Public Lands Initiative to proactively manage and plan for lands, including land swaps between the U.S. and Utah;

4. Amend the Antiquities Act/enact legislation to restrict a president's power to designate monuments;

5. Require federal agencies to give deference to/collaborate/forge stronger partnerships with local entities when planning and executing land management efforts within the state; or

6. Increase the payment in lieu of taxes that the U.S. pays to Utah.

SUTHERLAND

Western Land Policy Recommendations

Over 90 percent of all federally controlled land (one-third of the nation) is located in the West, with roughly one out of every two acres of our western states managed by D.C. bureaucrats nearly 2,000 miles away. Westerners have been promised that this expansive federal control will preserve the environment, benefit local economies, and protect public recreation. Instead, federal mismanagement provides our communities with polluted air, dying forests, decimated wildlife, depressed economies, underfunded public education, and blocked recreational opportunities. Unfortunately, the consequences of federal land mismanagement aren't confined by the borders of Western states; they jeopardize the entire nation's security and economic prosperity. Our public lands, our wildlife, our communities, our families and our nation deserve better.
Getting public land policy right directly aligns with many of President-elect Donald Trump's goals to "Make America Great Again," including:

1. Creating high-paying mining, logging and energy exploration jobs;
2. Growing GDP by 4 percent annually;
3. Building the tax base necessary to balance the budget and draw down our national debt;
4. Reducing the size of government and limiting intrusive federal regulations; and
5. Securing energy independence and access to rare earth minerals, with all its associated foreign policy benefits.

We propose six policy recommendations designed not only to assist the Trump administration as it pursues these lofty and necessary goals, but to place more control and increased management of our public lands in the hands of locals who know and care for the land the most.

- **Executive Order on National Monument Designations –** Issue an executive order stating that the president will undo or reduce the size of any national monument designation if called upon to do so through a resolution passed by a state legislature.

Executive Order on the Management of Wilderness Areas (U.S. Forest Service) and Wilderness

Study Areas (Bureau of Land Management) – Issue an executive order requiring the U.S. Forest Service and BLM to manage millions of acres of public lands that have been identified as potential wilderness in land use plans or legislation for multiple uses including motorized and mechanized.

- **Executive Order and Agency Rules on Federal Lands Transfer –** Issue an executive order and pursue agency rules that require non-defense federal agencies (BLM, National Parks Service,

  Forest Service, and U.S. Fish and Wildlife Service) that control more than 25 percent of total land acreage (not including Native American reservation lands) in any county to prioritize the transfer of public lands to state control before they can create new wilderness study areas or consider new national monument designations in that state.
- **Re-empowerment of the States Amendment (HJR 100, Rep. Rob Bishop) –** Urge Congress to pass this legislation, which will empower states to repeal any federal rule, regulation, presidential executive order, or administrative ruling if two-thirds of the several state legislatures vote to do so.
- **Antiquities Act Reform –** Reform the Antiquities Act to: (1) require approval of Congress for any monument designation larger than 300 acres; (2) require approval of local and state legislative bodies for any monument designation larger than 640 acres (roughly 1 square mile); and (3) require approval of the monument management plan, and any subsequent changes to those plans, by a broadly representative committee of elected officials and local stakeholders, including conservationists, recreationists, industry representatives, and residents living in the area near a monument.
- **Transfer of Public Lands Act –** Through legislative action, transfer title of federal lands managed by the Forest Service, BLM, and Fish and Wildlife Service to willing Western states.
- **Environmental Litigation Reform –** Reform all statutory schemes that bear on environmental litigation to require a mandatory award of legal fees to the prevailing party in all cases, regardless of whether the prevailing party is a private party or the government. Include rules precluding collusion between government attorneys and those representing private or public interests and providing disciplinary sanctions for anyone engaging in such conduct.

Thank you for your time and consideration in these important matters. We are excited for what the next four years hold as we work together to make our nation more secure and economically prosperous. Please feel free to contact us with any questions or comments you may have.